

2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1144

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1144
1/15/2019
30801

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Fees for insurance services.

Minutes:

Attachment 1, 2

Vice Chairman Lefor: Opens the hearing HB 1144.

Steve Bain~Representing the Independent Insurance Agents: Attachment 1.

Rep P Anderson: Do you have any concerns that some of the services offered might be on that line of legal?

Steve Bain: Always, they have to understand where the line is drawn.

Rep P Anderson: Is there any way that the client is not getting any legal advice?

Steve Bain: I don't believe so, they are not the law, they are licensed insurance agents.

Rep P Anderson: When you are paying a fee for the advice, that's where I'm vague on.

Steve Bain: The fee is not legal type advice, it's risk management tools. They are trying to get reimbursed.

Rep Schauer: What was the pushback they received from the legislature two years ago in 2017?

Steve Bain: The personal lines article. Legislators did not want the insurance agents to charge grandma for delivering a life insurance check.

Rep Bosch: Are other states doing this where the agents have a dual role?

Steve Bain: There are other states that are doing this.

Rep Adams: Is there a set cost or is the agent setting their own fees?

Steve Bain: No, there is not a set fee, the fee is negotiated with the client.

Rep Louser: Who's the agent's fiduciary responsibility? Is it to their client?

Steve Bain: They are responsible on both sides.

Rep Richter: Is the client going to know that they don't have to accept the offer from that agent & they can shop around?

Steve Bain: They are offering this but they don't have to take the services.

Vice Chairman Lefor: Anyone here to testify in support, opposition, neutral of HB 1144?

Jeff Ubben~Deputy Insurance Commissioner: Attachment 2.

11:15

Rep Kasper: Would the NAIC give you any information on what other states are doing on fees & commissions?

Jeff Ubben: I have a list but I think it's about 23 states.

Rep C Johnson: Is there a way for the agents to charge their fees through the company to the agent?

Jeff Ubben: The difficulty with that is, if you were set up like that, it gets complicated because you are truly representing the party you are getting money from. If you are mixing that pot of money, is when the duties of loyalties get mixed as well. That is my initial reaction to that.

Rep Louser: Following the Attorney General's opinion, compensation follows representation based on current law?

Jeff Ubben: Yes, it could be.

Rep Kasper: Does it require that you file with the insurance department or are you going to provide a form format that you are going to ask the producer to follow?

Jeff Ubben: No, we haven't talked about that in any part of the nature.

Rep Kasper: You have a right to review or require what's in the contract.

Rep Kasper: It says on line 13 on the first page, so would you come up with some type of form, a guideline for that producer to follow & add language that they feel appropriate.

Jeff Ubben: Yes, that's how we would handle it. A state form that we would create.

Rep Kasper: It would appear to me for public interest, you want that form to clearly disclose to the client the fiduciary responsibility that the agent to fully disclose to the client being asked to consult for & not half disclosure.

Jeff Ubben: Yes, that would be important.

Rep Bosch: When they transition from an insurance agent, aren't they becoming a consultant at that point. The relationship changes from that point to something different. I'm confused about the format.

Jeff Ubben: They are still acting as an agent, it's just a matter of who they are representing in a transaction.

Chairman Keiser: Anyone here to testify in a neutral position on HB 1144? Closes the hearing. Committee discussion.

Rep Kasper: Explains why he thinks this is important & you can save your client money in the medical market. That is transparency.

Rep Adams: When you say this fee, you can go out & brokerage all the companies. As an insurance agent, don't you do that now without charging a fee?

Rep Kasper: You can do that without a fee, but the dilemma, it's a huge amount of work.

Rep Adams: Moves the amendment submitted by Jeff Ubben.

Rep Laning: Second.

Voice vote~motion carried.

Chairman Keiser: What are the wishes of the committee?

Rep Schauer: Moves a Do Pass as Amended.

Rep Louser: Second.

Rep P Anderson: I can't support the bill. I see some insurance agents giving ill advice.

Rep Kasper: I don't think it covers buy/sell agreement.

Roll call was taken for a Do Pass on HB 1144 with 12 yes, 1 no, 1 absent & Rep Schauer is the carrier.

1/15/19 DA

19.8154.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

January 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1144

Page 2, line 23, after "means" insert ", if the fee is disclosed to the client in writing and agreed to by the client in writing"

Renumber accordingly

Date: Jan 15, 2019Roll Call Vote #: 12019 HOUSE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 1144

House _____ Industry, Business and Labor _____ Committee

☐ SubcommitteeAmendment LC# or
Description: _____

Recommendation

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐ _____Motion Made by Rep Adams Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor

Assignment _____

Page 2, line 23, after "means" insert ", so long as the fee is disclosed to the client in writing and agreed to by the client in writing."

Date: Jan 15, 2019Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1144

House _____ Industry, Business and Labor _____ Committee

☐ SubcommitteeAmendment LC# or
Description: _____

Recommendation

☐ Adopt Amendment☒ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☒ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐ _____Motion Made by Rep Schauer Seconded By Rep Louser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<u>X</u>		Rep O'Brien		
Vice Chairman Lefor	<u>X</u>		Rep Richter		
Rep Bosch	<u>X</u>		Rep Ruby		
Rep C Johnson	<u>X</u>		Rep Schauer		
Rep Kasper	<u>X</u>		Rep Adams		
Rep Laning	<u>X</u>		Rep P Anderson		<u>X</u>
Rep Louser	<u>X</u>		Rep M Nelson	<u>Ab</u>	

Total (Yes) 12 No 1Absent 1Floor
Assignment Rep Schauer

REPORT OF STANDING COMMITTEE

HB 1144: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1144 was placed
on the Sixth order on the calendar.

Page 2, line 23, after "means" insert ", if the fee is disclosed to the client in writing and
agreed to by the client in writing"

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1144

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1144
3/13/2019
Job #33625

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to fees for insurance services.

Minutes:

Att. #1-2

Chairman Klein: Opened the hearing on HB 1144. All members were present.

Representative Kasper, District 46: introduced the bill. Currently under North Dakota law, a licensed agent can receive commission on the sale of policies. But if that producer wishes to charge a fee in addition to the commission. It is currently impossible to do. This opens that up.

Vice Chairman Vedaa: Let's say you were to have that fee out there and you disclosed it to your client. If you were to say but if you do purchase this product from me, I will subtract that fee off of this. Would that be considered rebating?

Representative Kasper: Yes, and I would advise against that.

Chairman Klein: There is full disclosure, your customer knows? Is that going to put you in a tight spot to have to do that?

Representative Kasper: It's the option of the agent to even make that decision. If you don't want to get into that position, you simply don't have to charge a fee. You can just work on commission.

Chairman Klein: It's full disclosure right?

Representative Kasper: Its full disclosure. The commissioner may adopt rules determined necessary by the commission for the administration of this section.

Chairman Klein: This doesn't have anything to do with the private market?

Representative Kasper: Commercial and group.

Senator Roers: In our business we do this all the time where we have part one contract and that contract fee is rolled into the overall contract if in fact an overall contract is adopted. Why do you need to do this in your business? Could this not be an internal policy?

Representative Kasper: Right now you can either accept a fee or commission but not both, that North Dakota law.

Steve Bain, the Independent Insurance Agents of North Dakota: see attachment #1 for testimony in support of the bill.

Chairman Klein: We made the bill better, last time there were members of your group that were not in support of this bill.

Steve Becher, Executive Director, Professional Insurance Agents: testified in support. These would be outside of the normal process, like providing risk management services on top of selling them a claim. The ability to charge for credit card fees. We can't recoup the cost of those credit card fees. For an agency, they're averaging 3%. Part of this bill is allowing us to pass on that 3% fee. The insurance department is on board with this. These services are the overall.

Levi Andrist, J Group, introduced Bruce Ferguson, American Council of Life Insurers: testified in support of the bill. **See attachment #2 for proposed amendments.** What is meant by a higher standard of care than an ordinary standard of care. Do you feel comfortable that you've complied with that and if so, how? We were trying to come up with ways to clarify what is meant by a higher standard of care than an ordinary standard of care. We came up with A fiduciary, under the law means sole duty of loyalty. What is meant by a higher standard of care. We may need some further work on this. In my conversations, the reps are comfortable with the direction this is going?

Chairman Klein: You're okay with the bill. You're okay with the higher standard of care? What do words mean?

Bruce: We would add the amendment.

Jeff Ubben, Deputy Insurance commissioner: testified in support of the bill. We were neutral two sessions ago. We thought folks could've been taken advantage of. This year the bill has changed. The intent is commercializing. The average person being taken advantage of has moved. The fiduciary piece is important. We've seen the amendment; we're close to agreeing. We would rather it say an exclusive duty of loyalty. Question from Vice Chairman Vedaa if we would take the fee and give it back we would consider that rebating. The law is an attorney general's opinion that would be superseded by this legislation if it were enacted.

Senator Kreun: How many other states have this in place?

Jeff: A little more than half.

Chairman Klein: So you're gonna go work on this amendment and come back once you're all in agreement?

Jeff: Yes, sir.

Chairman Klein: Closed the hearing on HB 1144.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1144
3/20/2019
Job #34035

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to fees for insurance services.

Minutes:

None.

Chairman Klein: Opened the committee work session on

Chairman Klein: There were concerns about higher standards of care versus normal standards, just moments ago I saw the insurance commissioner and Levi Andrist and they said to just go with it and if they had any issues they'd figure it out next session.

Vice Chairman Vedaa: Moved a Do Pass.

Senator Roers: Seconded.

Chairman Klein: This bill last session went all the way down to personal lines. And this one will only relate to those other commercial lines.

Senator Piepkorn: In a business relationship, they should be aware of what its gonna cost them.

Chairman Klein: And I believe the insurance department approves of charging fee it just has to be disclosed.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Kreun will carry the bill.

Date: 3/20
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1144

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vedaa Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Kreun

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1144, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1144 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1144



Independent Insurance
Agents of North Dakota

PO Box 973
Bismarck, ND 58502-0973

701-751-0605
Cell: 701-220-2233
steve@iand.org

Attachment 1
Jan 15, 2019
Page 1

Testimony for HB 1144

Mr. Chairman

Members of the Committee

My name is Steve Bain representing the Independent Insurance Agents of North Dakota

I stand before you in SUPPORT of HB1144

Currently, state statute does not allow a licensed insurance agent to receive a commission and charge a fee on the same account.

Agent/client relationships are changing and agents may be asked to provide additional services that were not included in the original relationship such as risk management and loss control services, certificate of insurance management, review of insurance language within construction contracts, buy-sell contract arrangements and ability to pay agency bill insurance premiums with credit cards.

Our association attempted similar legislation last session without success. We have made some changes to be proposal legislation for this session including excluding personal homeowners, automobile, life and health insurance from fee consideration. This proposed legislation is designed for a licensed insurance professionals to offer their commercial clients additional services and only after a signed additional services disclosure agreement is received, receive a fee for the service.

We asked the Insurance Commissioner and his staff for their thoughts and received suggestions for improvement of the proposed legislation, and did receive a positive but neutral response.

I ask this committee for your positive consideration and a DO PASS recommendation.

Thank you for your time and I would be happy to answer any questions you may have.



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HB 1144

PO Box 973
Bismarck, ND 58502-0973

701-751-0605
Cell: 701-220-2233
steve@iand.org

01/14/2019

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Jon Erickson
Fargo, ND 58102

Attachment 1
Jan 15, 2019
Page 2

Members of the House Industry, Business and Labor Committee

Committee Members,

The commercial buyer of insurance in ND, when choosing the method of payment for providers of insurance and risk management service, is limited to only commission when the payment is made to an insurance producer. There are disadvantages to the buyer of insurance when the method of payment is commission such as;

- a. Disincentive for the insurance producer to offer the lowest reasonable premium due to an increase in commission for a larger premium
- b. Makes the evaluation of the value of the services difficult

There are advantages to the buyer of insurance when the method of payment is fees which include;

- a. Facilitates the evaluation of the value of the services received from the insurance producer
- b. Facilitates transparency of premiums and costs

Fee based compensation is an important payment method for the commercial buyer of insurance to evaluate services, including services that fall outside of the traditional role of the insurance agency. The definition of insurance producer in the ND Century code is "a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance." Most insurance agencies operate under this definition. The role of the commercial insurance agency has evolved and more emphasis is placed on services to assist with loss control and risk management. These services fall outside the role of the traditional insurance agency which primarily; solicited insurance, sold insurance and negotiated insurance. The modern insurance agency must also add risk and loss control services to remain competitive.

The decision in regard to the method of payment for services should be a decision between the buyer of insurance and the insurance agent. HB 1144 will allow for more innovative risk management service and transparency of cost for the buyer of insurance and a certainty of payment for the insurance agency regardless of premium size.

Jon Erickson
Certified Risk Manager, Certified Insurance Counselor, Certified Work Comp Advisor, Management Liability Insurance Specialist

Attachment 2
Jan 15, 2019
Page 1

Prepared by the North Dakota
Insurance Department
January 14, 2019

PROPOSED AMENDMENTS TO BILL NO. 1144

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Renumber accordingly



Independent Insurance
Agents of North Dakota

HB 1144 3/13/19
Att#1

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We asked the Insurance Commissioner and his staff for their thoughts and received suggestions for improvement of the proposed legislation, and did receive a positive but neutral response.

I ask this committee for your positive consideration and a DO PASS recommendation.

Thank you for your time and I would be happy to answer any questions you may have.

HB 1144 3/13/19 Att #2

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1144

Page, 2, line 20, after the period insert "Nothing in this paragraph shall establish or imply a fiduciary duty of loyalty of the insurance producer to the person to be charged a fee for services."

Renumber accordingly